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6 UNITED STATES DISTRICT COURT
7 SOUTHERN DISTRICT OF CALIFORNIA
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11 E-TICKETS SOFTWARE, INC., a California
12 corporation,

13 Plaintiff,

14 v.

15 NEW YEARS NATION, LLC, a New York
16 Domestic Limited Liability Company; JANN
17 YOGMAN, an individual,
18 Defendants.
19

CASE NO. 07 CV 1645 BEN JMA

ORDER GRANTING DEFENDANTS'
MOTION TO TRANSFER VENUE

20 Defendants New Year's Nation, LLC (incorrectly named as New Years Nation, LLC) and Jann
21 Yogman ("Defendants") filed a Motion to Dismiss Action for Improper Venue or, in the Alternative,
22 to Transfer Venue ("Motion") with this Court on October 17, 2007. Plaintiff E-Tickets Software, Inc.
23 ("Plaintiff") has not opposed the Motion. Defendants asked the Court to dismiss this action or to
24 transfer it to the U.S. District Court for the Southern District of New York, where there is a related case
25 pending. The Court agrees with Defendants that New York is a proper venue for this case and orders
26 the present action to be transferred to the Southern District of New York.

27 In support of their Motion, Defendants attached a copy of the complaint they filed against
28 Plaintiff in the U.S. District Court for the Southern District of New York on July 31, 2007. Plaintiff
filed the present action with this Court against Defendants nearly a month later – on August 20, 2007.

1 “There is a generally recognized doctrine of federal comity which permits a district court to decline
2 jurisdiction over an action when a complaint involving the same parties and issues has already been
3 filed in another district.” *Pacesetter Systems, Inc. v. Medtronic, Inc.*, 678 F.2d 93, 95 (9th Cir. 1982)
4 (citations omitted). Because the July 31, 2007 action involves the same parties, this case must be
5 transferred to the Southern District of New York, where the previously filed related case is pending.

6 Furthermore, in support of their Motion, Defendants attached a declaration indicating that an
7 earlier agreement between the parties contains a forum selection clause providing that “any action,
8 demand, claim or counterclaim relating to the terms and provisions of this Agreement, or to its
9 breach, shall be commenced in New York in a state or federal district court of competent
10 jurisdiction.” *See* Yogman Decl. Ex. B ¶ 4, Docket Entry No. 9.2. Plaintiff failed to file an
11 opposition to Defendants’ Motion or to dispute the validity of this agreement. The Court, therefore,
12 presumes that the forum selection clause in this agreement is valid. “[A] freely negotiated private . .
13 . agreement, unaffected by fraud, undue influence, or overweening bargaining power, such as that
14 involved here, should be given full effect.” *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 591
15 (1991) (quotations and citations omitted). The forum selection clause provides that the parties must
16 resolve their disputes in New York. Accordingly, this lawsuit was improperly brought before this
17 Court.

18 Finally, Defendants’ unopposed Motion indicates that a transfer to the Southern District of
19 New York is necessary for the convenience of the parties and witnesses. It appears that a number of
20 Defendants’ witnesses are present in New York; that the contract was negotiated, at least in part, in
21 New York; that the actions leading to the dispute and the present lawsuit occurred in New York; and
22 that at least one Defendant is a New York resident. These factors further weight in favor of a
23 transfer.

24 IT IS HEREBY ORDERED that Defendants’ Motion to Transfer Venue is GRANTED, and
25 this action is transferred to the U.S. District Court for the Southern District of New York and

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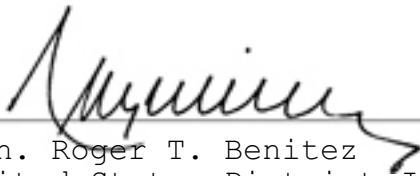
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1 consolidated with the earlier filed, related case, no. 07-CV-06876-NRB.

2 IT IS SO ORDERED.

3 DATED: November 13, 2007

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5 Hon. Roger T. Benitez
6 United States District Judge
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